

**MINUTES
of the
SEVENTH MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

August 27, 2014

**Rotunda of the University of New Mexico (UNM) Science and Technology Park
Albuquerque**

The seventh meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio "Moe" Maestas, co-chair, on August 27, 2014 at 9:25 a.m. at the Rotunda of the UNM Science and Technology Park in Albuquerque.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Sen. Sander Rue

Absent

Rep. Jane E. Powdrell-Culbert

Guest Legislator

Sen. Daniel A. Ivey-Soto

Staff

Douglas Carver, Staff Attorney, Legislative Council Services (LCS)
Monica Ewing, Staff Attorney, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, August 27

Welcome and Introductions

Representative Maestas welcomed members of the CJRS, staff and members of the public. Members of the CJRS, staff and presenters introduced themselves.

Past Criminal Reform Efforts in New Mexico

Professor Leo Romero of the UNM School of Law discussed the background of a revision of the Criminal Code that he undertook from 1984 to 1985, presenting it to the legislature in January 1986. The reform idea was initiated by an interim committee, and Professor Romero contracted with the LCS to undertake the reform.

Professor Romero was given the charge to:

- review the Criminal Code and case law;
- examine the Model Penal Code; and
- ensure consistency, such as more serious crimes having more serious penalties.

Professor Romero discussed the contents of his proposed Criminal Code reform, noting that his reform contains commentaries for every provision, including explanations, changes, additions and deletions to the various statutes.

Professor Romero stressed the importance of having *mens rea* requirements for crimes in statute. At present, statutes often focus on the crime and conduct instead of the mental state. The New Mexico Supreme Court has often determined a *mens rea* requirement for various criminal statutes. The *mens rea* requirements that Professor Romero proposes in his Criminal Code reform are:

1. intent — acts with a purpose of doing;
2. knowing — awareness of what you are doing and the consequences;
3. recklessness — awareness of risk and consciously disregarding it; and
4. negligence — being unaware of the risk.

Professor Romero advised the subcommittee that the proposed Criminal Code reform was not enacted. The revised code was opposed by the attorney general and district attorneys as well as the Public Defender Department. In the end, there was not a strong interest in advancing the code in the legislative session, and it may not even have been introduced.

Professor Romero advised the subcommittee that there has to be a willingness in the legislature to enact the Criminal Code reform. He advised the subcommittee that there should be a commission developed that would be responsible for drafting and enacting a revised code, and he added that Criminal Code reform has to be inclusive and have strong legislative sponsors to be successful. Incorporating the views of various interest groups is also important.

Members of the subcommittee asked Professor Romero various questions about the time it took to undertake his code reform and the feasibility of revising it. They asked questions concerning specific statutes that have been reformed and asked for additional background concerning the use of the Model Penal Code.

Collateral Consequences of Conviction and Creation of a High Misdemeanor in the Criminal Code

Sheila Lewis, an attorney who retired from the Public Defender Department, gave a presentation to the subcommittee concerning the collateral consequences of a conviction, focusing on the collateral consequences of a felony conviction. Ms. Lewis explained that collateral consequences are the negative effects of a conviction that persist after an individual has completed incarceration as well as a period of parole or probation. Fines, imprisonment, probation, parole and supervised release are not collateral consequences. Ms. Lewis presented some areas that can be subject to collateral consequences:

- employment;
- driving privileges;
- public benefits;
- housing;
- education;
- public office;
- immigration;
- voting rights;
- family rights; and
- firearms.

Ms. Lewis informed the subcommittee that one in four adults in the United States has an arrest or conviction record. A felony conviction reduces a job callback by 50 percent. Ms. Lewis explained that New Mexico has various laws that make it possible for felons to get a second life and avoid discrimination. She also discussed how people coming out of jail can be helped by providing them with identification free of charge. Ms. Lewis informed the subcommittee that policies and laws need to be changed to help reintegrate ex-offenders. Ms. Lewis explained that expungement should be allowed, notice of collateral effects should be given to defendants and the Uniform Collateral Consequences of Conviction Act should be enacted. Ms. Lewis informed the subcommittee of various initiatives, such as applying "ban the box" to private employers and housing; encouraging civil engagement; and redefining a deferred sentence, conditional discharge and low-level felonies.

Senator Ivey-Soto presented the reasons for creation of a high misdemeanor in the Criminal Code. He informed the subcommittee that there are 458 fourth degree felonies in New Mexico, creating an environment that constrains opportunity for citizens instead of maximizing opportunity. He informed the subcommittee that the state has created economic crimes, and he read some examples from the statutes. Senator Ivey-Soto explained that while such activities should be illegal, they should not carry the penalty stigma, which was intended for the most serious crimes.

Members of the subcommittee discussed past efforts to pass an expungement bill. Members of the subcommittee then discussed the felony and misdemeanor sentences and which

courts hear each type of penalty. Many members commented on how it would be possible to make some fourth degree felony crimes a misdemeanor, which would move them out of the felony realm. Members of the CJRS discussed recidivism rates among those who have identification when they leave prison and those who are registered to vote. Ms. Lewis added that collateral consequences should be negotiable like the rest of the plea.

Approval of Minutes

Upon a motion made by Senator McSorley and seconded by Representative Chasey, the minutes of the July 30, 2014 meeting of the subcommittee were approved.

Bringing Gender into the Drug Reform Conversation: Sharing Expertise of Women in the New Mexico Criminal Justice System

Micaela Cadena, policy director, Young Women United, introduced women who have been enmeshed in the New Mexico criminal justice system through experiences of drug abuse and addiction, domestic violence and crimes they committed. They stressed the importance of resources for gender-focused treatment and explained that the criminalization of addiction is not working. Many of these individuals stated that they could have avoided many of the problems they experienced in life if they had been given treatment or support in the early stages of their struggles. The women also informed the committee that most programs have not helped them to become functioning members of society; instead, the programs focus on the physical effects from drug use. The women also explained that females, especially mothers, need to be helped instead of punished for being addicts. One woman explained that most of the programs in the state do not have structure and that the housing and health components are missing. Ms. Cadena explained to the subcommittee that Crossroads for Women has been able to provide the treatment that these women are seeking. Members of the subcommittee discussed the parameters of treatment programs and asked the women questions about their individual experiences.

KC Quirk, executive director, Crossroads for Women, informed the subcommittee that the organization primarily serves as a housing program that is funded through the federal Department of Housing and Urban Development. Ms. Quirk explained that Crossroads brings in women who fit the definition of homelessness, and it also takes women with mental health disorders and addiction disorders. She added that Crossroads does outreach to jails and to other treatment programs. Ms. Quirk informed the subcommittee that although Crossroads is primarily a housing program, it focuses on addiction and recovery and tries to address all issues comprehensively. Ms. Quirk added that Crossroads has a waiting list of 50 or more women and operates at \$64.00 per day. Members of the subcommittee inquired about the recidivism rate for Crossroads. Ms. Quirk advised the subcommittee that Crossroads has a 10 percent recidivism rate for new clients. Ms. Quirk discussed other details of the Crossroads programs and noted that it is the only program that uses a gender-based model. Ms. Quirk informed the committee that 50 percent of the Crossroads budget comes from federal, state and local money, and the other 50 percent comes from foundations, corporate donations and individual donations. Ms. Quirk added she would like to expand statewide but expansion locally is where she would like to start.

Probation and Parole — An Overview and Discussion of Technical Violations of Probation and Parole

Sherry Stephens, executive director, Parole Board, outlined the composition and purpose of the Parole Board. Ms. Stephens informed the subcommittee that the Parole Board maintains about 20,00 files, including all state cases. Ms. Stephens added there are 15 board members. Ms. Stephens explained to the subcommittee that parole sets the criteria for inmates to follow upon release, noting that parole enhances public safety. Ms. Stephens explained to the subcommittee that a person on probation or parole works with a probation or parole officer on any issues. Ms. Stephens told the subcommittee that in fiscal year (FY) 2014, the board conducted more than 4,000 hearings, including 2,662 minimal sentence hearings and 1,150 ramification hearings.

Rose Bobchak, acting director, Adult Probation and Parole Division, Corrections Department (NMCD), informed the subcommittee that there are 19,000 offenders on probation or parole in New Mexico. Linda Freeman, deputy director, New Mexico Sentencing Commission (NMSC), explained to the subcommittee that most offenders have a probation term that is supervised. Fourteen percent are there because of a probation violation. Ms. Freeman advised the subcommittee that there are multiple reasons for violations. Ms. Freeman structured a hierarchy rank for violations:

1. new charge;
2. did not comply; and
3. violated conditions.

Ms. Freeman told the subcommittee that the NMSC usually gives individuals two opportunities to make a condition with the parole or probation officer to avoid being re-incarcerated.

Ms. Bobchak informed the CJRS that the NMSC has a "Steps Program" for violations. The program carries a penalty for each time someone violates probation or parole. The first violation, a technical violation, carries 10 hours of community service. The second violation carries 20 hours of community service. The third violation imposes a penalty of incarceration for seven days.

Members of the subcommittee had questions concerning some of the details of probation and parole. Members inquired why absconding was the highest statistic for violations in the data provided. Ms. Bobchak informed the committee that many probationers and parolees abscond because they start using drugs again and they do not want a positive test. Ms. Stephens told the subcommittee that board members receive per diem and establish a quorum with two members. Ms. Stephens added that parole should not be more than two years.

Transitional Living and Information Technology Needs for the NMCD

Gregg Marcantel, secretary, NMCD, and Ms. Bobchak presented a proposal for the NMCD to launch a transitional living facility in Los Lunas for inmates about to be released to the

community. Secretary Marcantel explained to the subcommittee that the vision for transition into communities is an excellent way to address the recidivism rate. Ms. Bobchak added that halfway houses and transitional living centers help reduce recidivism, encourage sobriety, provide referrals to programs and impose curfews. Ms. Bobchak explained that these transitional living programs would be more structured if they offered house case management, on-site substance abuse treatment and education. Secretary Marcantel said that budget deficits are an obstacle in trying to make better transitions. He added that the NMCD is trying to divert some money to help. Ms. Bobchak added that NMCD has researched what other departments are doing. She explained to the committee that agencies such as the Veterans' Services Department are using diversity programs, detention centers and diversion programs. Ms. Bobchak added that the NMCD has a vision to implement similar programs that focus on pre-release and post-release. Pre-release programs will use evidence-based assessments to see what the needs are, such as a job, family support, income support and substance abuse support. Post-release programs will provide structure for transition out of incarceration and will have treatment programs, case management and therapy and provide education on how to become a working member of society. The NMCD currently has these programs but not in one location.

Members of the subcommittee asked questions regarding the details of the proposed transitional living facility.

Secretary Marcantel and Timothy Oakeley, chief information officer, NMCD, gave a presentation to the subcommittee on the department's information technology needs, focusing on an off-the-shelf data management system that would help the department track the success of its programs. Secretary Marcantel informed the subcommittee that it would cost \$8.5 million the first year and \$1.7 million a year after that.

Senator McSorley made a motion, seconded by Representative Chasey, that the subcommittee send a letter to the CCJ seeking approval for the CJRS to write a letter to the Legislative Finance Committee and the Department of Information Technology in support of the NMCD request for \$8.5 million to purchase new technology and the required support training. The motion passed with no dissenting votes.

Discussion of September Meeting Agenda

Mr. Carver discussed the upcoming schedule for the subcommittee. There will be presentations of specific proposals at the subcommittee's September meeting. Initial bill drafts will be presented at the October meeting and then be revised for subcommittee recommendation for endorsement by the CCJ at the subcommittee's November meeting.

Senator McSorley made a motion, seconded by Representative Chasey, that the subcommittee send a letter to the New Mexico Legislative Council requesting that money be authorized to allow Professor Romero's Criminal Code revision to be brought up to date. The motion passed with no dissenting votes.

Public Comment

Don Johnson, who deals with former sex offenders, suggested that before convicted sex offenders leave prison, they should have a mentor to help them register in a program like La Posada. He added that he has not seen any options for sex offenders that allow them to avoid incarceration on their first violation of supervisory probation. He also told the subcommittee that the NMCD allows people to stay in an RV park in Tijeras, one person at a time.

Margarita Sanchez discussed voting rights and told the subcommittee that prisons could give inmates information on voting. She also addressed the NMCD eliminating family visits and expanding the women's prison.

Adjournment

There being no further business before the subcommittee, the seventh meeting of the CJRS adjourned at 5:44 p.m.